

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

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Chapter 792 Drug Free Workplace

370 DM 792,9.1

Subchapter 9. Drug Free Workplace.

9.1 Introduction. On September 15, 1986, the President signed Executive Order 12564, Drug Free Federal Workplace, establishing a policy against the use of illegal drugs by Federal employees, whether on duty or off duty.

A. On July 11, 1987, Congress passed legislation effecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987), (hereafter, "the Act"), in an attempt to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

B. The Executive Order recognized that illegal drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year. The Federal Government, as the largest employer in the Nation, has a compelling proprietary interest in establishing reasonable conditions of employment including a plan designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and dealers that illegal drugs will not be tolerated in the Federal workplace.

C. The use of illegal drugs by Federal employees, on or off duty, cannot be tolerated. Employees who use illegal drugs, on or off duty, are less productive, have more on-the-job accidents, and a higher absenteeism rate than employees who do not use drugs and, thus, impair the Department's function to serve as an able custodian of the Nation's natural resources.

D. Drug usage could result in loss of life, injury, and damage or destruction of property. Emergency personnel must perform duties instantly and independently during times of crises with minimal supervision. For example, law enforcement officers and firefighters must be alert and ready to respond to emergency situations instantaneously.

E. Drug-using employees who interact with private industry could market for personal gain: (1) proprietary commercial and financial information of private entities in connection with mineral exploration and development; (2) advance notice of Departmental initiatives concerning leasing activities on Federal lands; (3) advance notice on planned Departmental land acquisition activities; and (4) proprietary data, including bid prices, in connection with procurements by the Department of goods and services. Further, drug usage could lead to intentional or unintentional law enforcement omissions or regulatory

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efficiently implement this program and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this program.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the servicing personnel office. Such records and information shall remain confidential, locked in a safe, with only authorized individuals who have a "need-to-know" having access to them.

D. Employee Assistance Program Records. The EAP Administrator shall maintain only those records necessary to comply with this order. After an employee is referred to an EAP, the EAP will maintain all records necessary to carry out its duties.

All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.

E. Maintenance of Records. The Department shall maintain records of the Drug Free Workplace Program consistent with OPM's Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the bureau head. The record keeping system should capture sufficient documents to meet the operational and statistical needs of this issuance, and include:

- (1) Notices of verified positive test results referred by the MRO;
- (2) Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
- (3) Anonymous statistical reports; and
- (4) Other documents the DPM, DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order.

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C. Drugs To Be Tested For. At a minimum, employees will be tested for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). Additional categories of drugs may be included at the discretion of the Medical Review Official in accordance with HHS guidelines.

D. Labor Organizations. The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation and training programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

9.3 Authorities.

A. Executive Order 12564, Drug Free Federal Workplace;

B. Executive Order 10450, Security Requirements for Government Employment;

C. Section 503 of the Supplemental Appropriations Act of 1987, P. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987);

D. Scientific and Technical Guidelines for Drug Testing Programs, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;

E. Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, Alcohol, (ADAMHA), (HHS), as amended;

F. Civil Service Reform Act of 1978, P. L. 95-454;

G. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug-abuse patient treatment records;

H. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;

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(3) Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral. Under Executive Order 12564, the Department is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except: if an employee (1) voluntarily admits his/her drug use prior to notification of selection for random testing; (2) completes counseling or in an EAP; and (3) thereafter refrains from drug use; such discipline is not required.

(1) The decision whether to discipline a voluntary referral will be made by the bureau head or his/her designee on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the Department in determining whether to discipline, shall consider that the employee has come forward voluntarily.

(2) The self-referral option allows any employee to step forward and identify him/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward, an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall merely constitute an identification for purposes of this section.

(3) The key to the provision's rehabilitative effectiveness is an employee's willingness to admit his/her problem. This provision will not be available to an employee who is asked to provide a urine sample when required or who is found to have used illegal drugs pursuant to 370 DM 792, 10.12A(1) or 10.12A(2), and who thereafter requests protection under this provision.

10.13 Records.

A. Confidentiality of Test Results. The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug, will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. 522a, and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO or his/her designee, may maintain only those records necessary for compliance with this order. Any

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9.5 Definitions.

A. "Applicant" means any individual tentatively selected for employment and includes any individual who has been tentatively identified for placement in a testing designated position and who has not, immediately prior to the placement, been subject to random testing. Employees currently occupying testing designated positions (TDPs) who apply and are tentatively selected for another TDP, are considered to be applicants and therefore subject to applicant testing. In cases of directed management assignment into TDPs, where for the "good of the service" an individual is placed into a TDP, the individual is not considered to be an applicant for purposes of applicant testing.

B. "Drug Program Coordinator (DPC)" means an official in each bureau headquarters assigned to carry out the purposes of this plan by the bureau head.

C. "Employee Assistance Program (EAP)" means the Department's counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

D. "Employee Assistance Program Administrator" means the individual responsible for ensuring the development, implementation and review of the Department EAP.

E. "Employee Assistance Program Coordinator" means the bureau official (designated by the bureau head) responsible for implementing and operating the EAP within the bureau component assigned to the coordinator, by providing counseling, treatment, and education services to employees and supervisors.

F. "Medical Review Official (MRO)" means the official who is responsible for receiving laboratory results and who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

G. "Illegal Drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 14 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

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B. Voluntary Testing. In order to demonstrate their commitment to the Department's goal of a drug free workplace and to set an example for other Federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the bureau DPC and their servicing personnel office. These employees will then be included in the pool of testing designated positions subject to random testing, and be subject to the same conditions, procedures and consequences for a finding of illegal drug use.

Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPC of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing. All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP, will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at a frequency stipulated in an abeyance contract with a minimum frequency of once per quarter year. Such testing is distinct from testing which may be imposed as a component of the EAP.

10.12 Finding of Drug Use and Consequences.

A. Determination. An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

- (1) Direct observation;
- (2) Evidence obtained from an arrest or criminal conviction;
- (3) A verified positive test result; or
- (4) An employee's voluntary admission.

B. Mandatory Administrative Actions. The Department shall refer any employee found to be using illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate. The Department shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, until the employee successfully completes rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the bureau head may, in his/her discretion, after consultation with the Medical

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M. **"Verified Positive Test Result"** means a test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory test approved by HHS), evaluated by the Medical Review Official and determined by him/her that there is no justification under 370 DM 792, 10.5.

9.6 Responsibilities.

A. **Secretary or Designee.** The Secretary or his/her designee shall be responsible for approving positions to be subject to drug testing and for assuring that resources are provided for the program. As necessary provide approval for discretionary funding of demand reduction activities.

B. **Director of Program Services.** The Director of Program Services shall oversee the administration of this program in achieving the objective of a drug free workplace with due consideration of the rights of the Government, the employee, and the general public.

C. **Drug Program Manager.** The Drug Program Manager (DPM) will provide technical management and guidance to the Director of Program Services and bureau heads. The DPM coordinates with bureau Drug Program Coordinators, Medical Review Official and the Employee Assistance Program Administrator, regarding their duties and responsibilities under the plan. Additionally, the DPM will initiate disciplinary action advising appropriate bureau heads in writing of all verified positive test results. The DPM will inform bureau Drug Program Coordinators of the results of all drug testing. The DPM will coordinate all drug testing activities in field offices and Headquarters and with the assistance of the EAP Administrator, publicize and disseminate drug program educational materials. The DPM will act as the Contracting Officer's Technical Representative (COTR) for collection and laboratory testing contracts and ensure that contractors are performing all functions in accordance with HHS technical and scientific guidelines. The Drug Program Manager is in the chain of review of disciplinary actions, once they are initiated.

D. **Bureau/Office Heads.** Each bureau/office head shall:

(1) Provide Employee Assistance Programs (EAP) emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;

(2) Arrange supervisory training to assist in identifying and addressing illegal drug use by agency employees;

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C. Obtaining the Sample. The employee may be asked to provide the urine sample under observation in accordance with the criteria set forth in 370 DM 792, 10.3.

10.10 Applicant Testing

A. Objectives. To maintain the high professional standards of the Department's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the rolls. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the Department, and will provide for a safer work environment.

B. Extent of Testing. Drug testing shall be required of all individuals tentatively selected for employment in a testing designated position.

C. Vacancy Announcements. Every vacancy announcement for positions designated for applicant testing shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

In addition, each individual tentatively selected for a position will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner.

D. Procedures. The DPC shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for necessary travel expenses.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug. They will be informed that such information will be reviewed only by the MRO or his/her designee to determine whether the individual is licitly using an otherwise illegal drug. The MRO will present his findings to the Drug Program Manager, who will contact the Drug Program Coordinator. The DPC will notify the servicing personnel officer, who will provide the applicant with a final determination.

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verified positive and will be disclosed to the Drug Program Manager and EAP Administrator, as required by the Agency Plan. Any medical information provided by the individual that is not specifically related to use of illegal drugs, will be treated as confidential and will not be disclosed to the EAP Administrator or DPM.

(4) If it is determined with reasonable certainty that there is a legitimate medical explanation or other reason to account for the confirmed positive laboratory findings, the test will be deemed to be negative and no information identifying the specific employee will be disclosed. Any medical information provided by the individual will be treated as confidential.

(5) All results, both positives and negatives, will be reported to the Drug Program Manager. Further, in cases of positives the MRO will also report same to the Departmental Employee Assistance Program Administrator.

(6) To ensure adequate documentation, a screening report on all positive drug tests as reported by the laboratory, will be prepared and maintained by the MRO. In cases where the MRO determines the positive is medically justified every effort will be made to obtain written documentation (prescriptions, letters from physicians, etc.) to support the decision. However, the final decision on documentation requirements rests with the MRO.

(7) In cases of negative results, a screening report will be prepared and maintained by the MRO when omissions on the chain of custody form could question the forensic validity of the result. A recollection and retesting can be ordered by the MRO.

(8) A quarterly inspection of the MRO's records will be conducted by an independent second physician to verify the accuracy and sufficiency of the MRO's records. A report of the findings will be sent to the Director of Program Services.

G. Supervisors. Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the Secretary or his/her designee, to suit specific program responsibilities, first-line supervisors shall:

- (1) Attend training sessions on illegal drug use in the workplace;
- (2) Initiate a reasonable suspicion test, after first making appropriate

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(1) Ensure that the means of random selection remains confidential; and

(2) Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the duty to achieve a drug free work force.

D. Notification of Selection. An individual selected for random testing, and the individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

E. Deferral of Testing. The time from random selection to actual testing should not exceed 14 calendar days. Individuals not available for testing within the 14-day period, i.e., on leave, travel, etc., will be exempted from testing and placed back in the random pool. The supervisor will be required to document in writing why the employee was not available for testing and report same in writing to the Director of Program Services.

10.9 Reasonable Suspicion Testing

A. Grounds.

(1) For employees in testing designated positions, testing may be required where there is reasonable suspicion of drug use based on, among other things:

(a) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;

(b) A pattern of abnormal conduct or erratic behavior;

(c) Arrest or conviction for a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;

(d) Information provided either by reliable and credible sources or independently corroborated; or

(e) Newly discovered evidence that the employee has tampered with a previous drug test.

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I. Employee Assistance Program Administrator. The EAP Administrator shall:

(1) Coordinate the development, implementation, and evaluation of the EAP. (See Appendix A);

(2) Supervise and designate the headquarters EAP Coordinator and counselors, and assist them in establishing field office EAP's; and

(3) Advise bureaus on the submission of annual statistical reports, and prepare consolidated reports on the Department's EAP activity.

J. Employee Assistance Program Coordinator. The Employee Assistance Program Coordinator in each bureau shall:

(1) Implement and operate the EAP within the bureau component assigned to the coordinator;

(2) Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;

(3) Coordinate with the bureau, the MRO and supervisors, as appropriate;

(4) Work with the DPC to provide educational materials and training to managers, supervisors, union representatives, and employees on illegal drugs in the workplace;

(5) Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

(6) Monitor the progress of referred employees during and after the rehabilitation period;

(7) Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

(8) Maintain a list of rehabilitation or treatment organizations which

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Individuals are not entitled, however, to present evidence to the MRO in a trial type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO or the staff of the MRO shall immediately contact the EAP Administrator and Drug Program Manager, upon obtaining a verified positive test result.

10.6 Exemption from Testing. While participating in a counseling or rehabilitation program, and at the request of the program administrator, the employee may be exempted from the random testing designated position pool for a period not to exceed sixty days, or for a time period specified in an abeyance agreement or rehabilitation plan approved by the bureau head or his/her designee. Upon completion of the program, the employee shall be immediately subject to follow-up testing pursuant to 370 DM 792, 10.11C.

10.7 Savings Provision. To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

10.8 Random Testing

A. Employees in Testing Designated Positions. The Executive Order requires random testing for employees in sensitive positions that have been designated as testing designated positions. The Department has determined that certain positions are testing designated positions for random testing.

B. Determining the Testing Designated Position. Among the factors considered in determining a testing designated position, are:

- (1) the extent to which the Department:
 - (a) Considers its mission inconsistent with illegal drug use;
 - (b) Is engaged in law enforcement;
 - (c) Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;

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- (d) Intensity of the treatment environment;
- (e) Availability of inpatient/outpatient care;
- (f) Other special needs, such as transportation and child care; and
- (g) Other special circumstances of the employee.

L. **Site Coordinator.** The Site Coordinator (SC) is a DOI employee designated by the Bureau DPC or other appropriate management official, at all DOI locations where testing is scheduled to be conducted. The SC responsibilities include coordinating the scheduling of employees selected for random testing with the appropriate supervisor, as necessary assisting in the collection duties, completing and forwarding employee collection records to the DPM and assisting with any required logistical arrangements.

M. **General Program Provisions.** Bureau heads shall develop implementation procedures to enable field offices to implement all aspects of this order, taking into account the unique geographical, personnel, budgetary and other relevant factors of the bureau. With approval of the Drug Program Manager, testing may proceed under this order as soon as any field office or operating site is prepared to commence with testing. Such procedures shall also encourage cooperation and coordination among components, to conserve resources and efficiently implement this plan.

9.7 **Advance Notification.**

A. **General Notice.** A general notice from the Secretary announcing the testing program, as required by Section 4(a) of Executive Order 12564, will be provided to all employees at least sixty (60) days prior to the implementation date of the plan. The notice shall be provided immediately upon completion of the congressional certification procedures pursuant to Section 503 of the Act and shall explain:

- (1) The purpose of the Drug Free Workplace Plan;
- (2) That the plan will include both voluntary and mandatory testing;
- (3) That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a testing designated position;

Subchapter 10. Drug Testing Procedures.

10.1 General. Individuals may be selected for testing in one or more of the categories listed below. For the protection of the individual and the Department in certain cases the individual may be required to provide a second specimen for testing. For example, if a specimen is collected and determined not to be testable, i.e., shipped to wrong laboratory, lost in shipping, urine leaked out, no chain of custody form, etc., a new specimen will be recollected from the donor. The recollection requirement does not apply to specimens determined by the laboratory to be adulterated (see section 10.12E). Also, if a specimen is received by the laboratory with omitted information on the chain of custody which could question the forensic validity of the specimen result, a second specimen may be collected. However, if the omitted information can be collected then a second specimen will not be necessary. The omitted information must be collected before the specimen is analyzed by the laboratory.

A. Random Testing. All employees in testing designated positions (TDPs) are subject to selection for random drug testing.

B. Voluntary Testing. Employees may volunteer for unannounced testing by notifying the servicing personnel office of their desire to do so.

C. Reasonable Suspicion Testing. Reasonable suspicion testing may be based upon, among other things, the criteria described under 370 DM 792, 10.9A.

D. Accident or Unsafe Practice Testing. Accident or unsafe practice testing may be based upon, among other things, the criteria described under 370 DM 792,10.11A.

E. Follow-up Testing. All employees who undergo counseling or rehabilitation programs for illegal drug use will be subject to unannounced testing, both during and after such a program.

F. Applicant Testing. Drug testing is required for all individuals who are tentatively selected for employment in testing designated positions. Individuals tentatively placed in a testing designated position may also be subjected to testing.

10.2 Technical Guidelines. The Department shall adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS, consistent with the authority granted by Executive Order 12564 and to the requirements of Section 503 of the Act. The Department's drug testing program shall have professionally trained collection personnel, a

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C. If the employee refuses to sign the acknowledgement, the employee's supervisor or other appropriate official shall note on the acknowledgement form that the employee received the notice. This acknowledgement shall be centrally collected for easy retrieval by the DPC. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this plan, since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug free.

9.8 Review of Designation. If an employee believes his/her position has been wrongly designated as a testing designated position (TDP), the avenue of appeal depends upon whether or not the employee is covered by a collective bargaining agreement.

A. Employees in a Bargaining Unit Covered by a Collective Bargaining Agreement. The right of an employee covered by a collective bargaining agreement to appeal the designation of his/her position as a TDP is subject to the provisions of the Federal Service Labor Management Relations Statute. Unless the negotiated grievance procedure provides otherwise, it is the sole and exclusive procedure available for the appeal.

B. Appeal Rights of Other Employees. If the appeal is not subject to a negotiated grievance procedure, the employee may file an administrative appeal to the Assistant Secretary - Policy, Management and Budget. The appeal must be submitted by the employee, in writing, to the bureau head within 15 days of notification, setting forth all relevant information. Bureau heads are delegated authority to deny appeals found to lack merit but refer those with merit along with recommendations to the Assistant Secretary - Policy, Management and Budget for a decision. The Assistant Secretary - Policy, Management and Budget shall review the forwarded appeal and render a decision. The decision is final and is not subject to further administrative review.

- (4) The roles of the medical staff, supervisors, personnel, and EAP personnel;
- (5) The ways to use EAP;
- (6) How the EAP is linked to the performance appraisal and the disciplinary processes; and
- (7) The process of reintegrating employees into the workforce.

B. Implementation. The bureau head shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the Drug Free Workplace Plan. Copies of the training packages are to be sent to the Director of Program Services.

C. Training Package. Supervisory training shall be required of all supervisors and may be presented as a separate course, or included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include:

- (1) Overall Departmental policy;
- (2) The prevalence of various employee problems with respect to drugs and alcohol;
- (3) The EAP approach to handling problems;
- (4) How to recognize employees with possible problems;
- (5) Documentation of employee performance or behavior, including referral for drug testing based on reasonable suspicion pursuant to 370 DM 792, 10.9;
- (6) How to approach the employee;
- (7) How to use the EAP;
- (8) Disciplinary actions, and removals from sensitive positions as required by Section 5(c) of the Executive Order;

Relationship to Other Programs

I. Employee Assistance Program (EAP)

A. Function. The Department's EAP plays an important role in preventing and resolving employee drug use by: demonstrating the commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however shall not be involved in the collection of urine samples or the reporting of test results. Further details of EAP operations are found in 370 DM 792.5. Specifically, the EAP shall:

(1) Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees' progress through treatment and rehabilitation;

(2) Provide needed education and training to all levels of the Department on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and

(3) Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained.

B. Referral and Availability.

(1) Any employee found to be using illegal drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems. The EAP Administrator shall be responsible for oversight and implementation of the EAP, and will provide, with the support of the Director of Program Services, high level direction and promotion of the EAP.

Relationship to Other Programs

I. Employee Assistance Program (EAP)

A. Function. The Department's EAP plays an important role in preventing and resolving employee drug use by: demonstrating the commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however shall not be involved in the collection of urine samples or the reporting of test results. Further details of EAP operations are found in 370 DM 792.5. Specifically, the EAP shall:

(1) Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees' progress through treatment and rehabilitation;

(2) Provide needed education and training to all levels of the Department on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and

(3) Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained.

B. Referral and Availability.

(1) Any employee found to be using illegal drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems. The EAP Administrator shall be responsible for oversight and implementation of the EAP, and will provide, with the support of the Director of Program Services, high level direction and promotion of the EAP.

- (4) The roles of the medical staff, supervisors, personnel, and EAP personnel;
- (5) The ways to use EAP;
- (6) How the EAP is linked to the performance appraisal and the disciplinary processes; and
- (7) The process of reintegrating employees into the workforce.

B. Implementation. The bureau head shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the Drug Free Workplace Plan. Copies of the training packages are to be sent to the Director of Program Services.

C. Training Package. Supervisory training shall be required of all supervisors and may be presented as a separate course, or included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include:

- (1) Overall Departmental policy;
- (2) The prevalence of various employee problems with respect to drugs and alcohol;
- (3) The EAP approach to handling problems;
- (4) How to recognize employees with possible problems;
- (5) Documentation of employee performance or behavior, including referral for drug testing based on reasonable suspicion pursuant to 370 DM 792, 10.9;
- (6) How to approach the employee;
- (7) How to use the EAP;
- (8) Disciplinary actions, and removals from sensitive positions as required by Section 5(c) of the Executive Order;

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C. If the employee refuses to sign the acknowledgement, the employee's supervisor or other appropriate official shall note on the acknowledgement form that the employee received the notice. This acknowledgement shall be centrally collected for easy retrieval by the DPC. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this plan, since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug free.

9.8 Review of Designation. If an employee believes his/her position has been wrongly designated as a testing designated position (TDP), the avenue of appeal depends upon whether or not the employee is covered by a collective bargaining agreement.

A. Employees in a Bargaining Unit Covered by a Collective Bargaining Agreement. The right of an employee covered by a collective bargaining agreement to appeal the designation of his/her position as a TDP is subject to the provisions of the Federal Service Labor Management Relations Statute. Unless the negotiated grievance procedure provides otherwise, it is the sole and exclusive procedure available for the appeal.

B. Appeal Rights of Other Employees. If the appeal is not subject to a negotiated grievance procedure, the employee may file an administrative appeal to the Assistant Secretary - Policy, Management and Budget. The appeal must be submitted by the employee, in writing, to the bureau head within 15 days of notification, setting forth all relevant information. Bureau heads are delegated authority to deny appeals found to lack merit but refer those with merit along with recommendations to the Assistant Secretary - Policy, Management and Budget for a decision. The Assistant Secretary - Policy, Management and Budget shall review the forwarded appeal and render a decision. The decision is final and is not subject to further administrative review.

Subchapter 10. Drug Testing Procedures.

10.1 General. Individuals may be selected for testing in one or more of the categories listed below. For the protection of the individual and the Department in certain cases the individual may be required to provide a second specimen for testing. For example, if a specimen is collected and determined not to be testable, i.e., shipped to wrong laboratory, lost in shipping, urine leaked out, no chain of custody form, etc., a new specimen will be recollected from the donor. The recollection requirement does not apply to specimens determined by the laboratory to be adulterated (see section 10.12E). Also, if a specimen is received by the laboratory with omitted information on the chain of custody which could question the forensic validity of the specimen result, a second specimen may be collected. However, if the omitted information can be collected then a second specimen will not be necessary. The omitted information must be collected before the specimen is analyzed by the laboratory.

A. Random Testing. All employees in testing designated positions (TDPs) are subject to selection for random drug testing.

B. Voluntary Testing. Employees may volunteer for unannounced testing by notifying the servicing personnel office of their desire to do so.

C. Reasonable Suspicion Testing. Reasonable suspicion testing may be based upon, among other things, the criteria described under 370 DM 792, 10.9A.

D. Accident or Unsafe Practice Testing. Accident or unsafe practice testing may be based upon, among other things, the criteria described under 370 DM 792,10.11A.

E. Follow-up Testing. All employees who undergo counseling or rehabilitation programs for illegal drug use will be subject to unannounced testing, both during and after such a program.

F. Applicant Testing. Drug testing is required for all individuals who are tentatively selected for employment in testing designated positions. Individuals tentatively placed in a testing designated position may also be subjected to testing.

10.2 Technical Guidelines. The Department shall adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS, consistent with the authority granted by Executive Order 12564 and to the requirements of Section 503 of the Act. The Department's drug testing program shall have professionally trained collection personnel, a

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- (d) Intensity of the treatment environment;
- (e) Availability of inpatient/outpatient care;
- (f) Other special needs, such as transportation and child care; and
- (g) Other special circumstances of the employee.

L. Site Coordinator. The Site Coordinator (SC) is a DOI employee designated by the Bureau DPC or other appropriate management official, at all DOI locations where testing is scheduled to be conducted. The SC responsibilities include coordinating the scheduling of employees selected for random testing with the appropriate supervisor, as necessary assisting in the collection duties, completing and forwarding employee collection records to the DPM and assisting with any required logistical arrangements.

M. General Program Provisions. Bureau heads shall develop implementation procedures to enable field offices to implement all aspects of this order, taking into account the unique geographical, personnel, budgetary and other relevant factors of the bureau. With approval of the Drug Program Manager, testing may proceed under this order as soon as any field office or operating site is prepared to commence with testing. Such procedures shall also encourage cooperation and coordination among components, to conserve resources and efficiently implement this plan.

9.7 Advance Notification.

A. General Notice. A general notice from the Secretary announcing the testing program, as required by Section 4(a) of Executive Order 12564, will be provided to all employees at least sixty (60) days prior to the implementation date of the plan. The notice shall be provided immediately upon completion of the congressional certification procedures pursuant to Section 503 of the Act and shall explain:

- (1) The purpose of the Drug Free Workplace Plan;
- (2) That the plan will include both voluntary and mandatory testing;
- (3) That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a testing designated position;

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Individuals are not entitled, however, to present evidence to the MRO in a trial type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO or the staff of the MRO shall immediately contact the EAP Administrator and Drug Program Manager, upon obtaining a verified positive test result.

10.6 Exemption from Testing. While participating in a counseling or rehabilitation program, and at the request of the program administrator, the employee may be exempted from the random testing designated position pool for a period not to exceed sixty days, or for a time period specified in an abeyance agreement or rehabilitation plan approved by the bureau head or his/her designee. Upon completion of the program, the employee shall be immediately subject to follow-up testing pursuant to 370 DM 792, 10.11C.

10.7 Savings Provision. To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

10.8 Random Testing

A. Employees in Testing Designated Positions. The Executive Order requires random testing for employees in sensitive positions that have been designated as testing designated positions. The Department has determined that certain positions are testing designated positions for random testing.

B. Determining the Testing Designated Position. Among the factors considered in determining a testing designated position, are:

- (1) the extent to which the Department:
 - (a) Considers its mission inconsistent with illegal drug use;
 - (b) Is engaged in law enforcement;
 - (c) Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;

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I. Employee Assistance Program Administrator. The EAP Administrator shall:

(1) Coordinate the development, implementation, and evaluation of the EAP. (See Appendix A);

(2) Supervise and designate the headquarters EAP Coordinator and counselors, and assist them in establishing field office EAP's; and

(3) Advise bureaus on the submission of annual statistical reports, and prepare consolidated reports on the Department's EAP activity.

J. Employee Assistance Program Coordinator. The Employee Assistance Program Coordinator in each bureau shall:

(1) Implement and operate the EAP within the bureau component assigned to the coordinator;

(2) Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;

(3) Coordinate with the bureau, the MRO and supervisors, as appropriate;

(4) Work with the DPC to provide educational materials and training to managers, supervisors, union representatives, and employees on illegal drugs in the workplace;

(5) Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

(6) Monitor the progress of referred employees during and after the rehabilitation period;

(7) Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

(8) Maintain a list of rehabilitation or treatment organizations which

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(1) Ensure that the means of random selection remains confidential; and

(2) Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the duty to achieve a drug free work force.

D. Notification of Selection. An individual selected for random testing, and the individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

E. Deferral of Testing. The time from random selection to actual testing should not exceed 14 calendar days. Individuals not available for testing within the 14-day period, i.e., on leave, travel, etc., will be exempted from testing and placed back in the random pool. The supervisor will be required to document in writing why the employee was not available for testing and report same in writing to the Director of Program Services.

10.9 Reasonable Suspicion Testing

A. Grounds.

(1) For employees in testing designated positions, testing may be required where there is reasonable suspicion of drug use based on, among other things:

(a) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;

(b) A pattern of abnormal conduct or erratic behavior;

(c) Arrest or conviction for a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;

(d) Information provided either by reliable and credible sources or independently corroborated; or

(e) Newly discovered evidence that the employee has tampered with a previous drug test.

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verified positive and will be disclosed to the Drug Program Manager and EAP Administrator, as required by the Agency Plan. Any medical information provided by the individual that is not specifically related to use of illegal drugs, will be treated as confidential and will not be disclosed to the EAP Administrator or DPM.

(4) If it is determined with reasonable certainty that there is a legitimate medical explanation or other reason to account for the confirmed positive laboratory findings, the test will be deemed to be negative and no information identifying the specific employee will be disclosed. Any medical information provided by the individual will be treated as confidential.

(5) All results, both positives and negatives, will be reported to the Drug Program Manager. Further, in cases of positives the MRO will also report same to the Departmental Employee Assistance Program Administrator.

(6) To ensure adequate documentation, a screening report on all positive drug tests as reported by the laboratory, will be prepared and maintained by the MRO. In cases where the MRO determines the positive is medically justified every effort will be made to obtain written documentation (prescriptions, letters from physicians, etc.) to support the decision. However, the final decision on documentation requirements rests with the MRO.

(7) In cases of negative results, a screening report will be prepared and maintained by the MRO when omissions on the chain of custody form could question the forensic validity of the result. A recollection and retesting can be ordered by the MRO.

(8) A quarterly inspection of the MRO's records will be conducted by an independent second physician to verify the accuracy and sufficiency of the MRO's records. A report of the findings will be sent to the Director of Program Services.

G. Supervisors. Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the Secretary or his/her designee, to suit specific program responsibilities, first-line supervisors shall:

- (1) Attend training sessions on illegal drug use in the workplace;
- (2) Initiate a reasonable suspicion test, after first making appropriate

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C. Obtaining the Sample. The employee may be asked to provide the urine sample under observation in accordance with the criteria set forth in 370 DM 792, 10.3.

10.10 Applicant Testing

A. Objectives. To maintain the high professional standards of the Department's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the rolls. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the Department, and will provide for a safer work environment.

B. Extent of Testing. Drug testing shall be required of all individuals tentatively selected for employment in a testing designated position.

C. Vacancy Announcements. Every vacancy announcement for positions designated for applicant testing shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

In addition, each individual tentatively selected for a position will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner.

D. Procedures. The DPC shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for necessary travel expenses.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug. They will be informed that such information will be reviewed only by the MRO or his/her designee to determine whether the individual is licitly using an otherwise illegal drug. The MRO will present his findings to the Drug Program Manager, who will contact the Drug Program Coordinator. The DPC will notify the servicing personnel officer, who will provide the applicant with a final determination.

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M. **"Verified Positive Test Result"** means a test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory test approved by HHS), evaluated by the Medical Review Official and determined by him/her that there is no justification under 370 DM 792, 10.5.

9.6 **Responsibilities.**

A. **Secretary or Designee.** The Secretary or his/her designee shall be responsible for approving positions to be subject to drug testing and for assuring that resources are provided for the program. As necessary provide approval for discretionary funding of demand reduction activities.

B. **Director of Program Services.** The Director of Program Services shall oversee the administration of this program in achieving the objective of a drug free workplace with due consideration of the rights of the Government, the employee, and the general public.

C. **Drug Program Manager.** The Drug Program Manager (DPM) will provide technical management and guidance to the Director of Program Services and bureau heads. The DPM coordinates with bureau Drug Program Coordinators, Medical Review Official and the Employee Assistance Program Administrator, regarding their duties and responsibilities under the plan. Additionally, the DPM will initiate disciplinary action advising appropriate bureau heads in writing of all verified positive test results. The DPM will inform bureau Drug Program Coordinators of the results of all drug testing. The DPM will coordinate all drug testing activities in field offices and Headquarters and with the assistance of the EAP Administrator, publicize and disseminate drug program educational materials. The DPM will act as the Contracting Officer's Technical Representative (COTR) for collection and laboratory testing contracts and ensure that contractors are performing all functions in accordance with HHS technical and scientific guidelines. The Drug Program Manager is in the chain of review of disciplinary actions, once they are initiated.

D. **Bureau/Office Heads.** Each bureau/office head shall:

(1) Provide Employee Assistance Programs (EAP) emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;

(2) Arrange supervisory training to assist in identifying and addressing illegal drug use by agency employees;

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B. Voluntary Testing. In order to demonstrate their commitment to the Department's goal of a drug free workplace and to set an example for other Federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the bureau DPC and their servicing personnel office. These employees will then be included in the pool of testing designated positions subject to random testing, and be subject to the same conditions, procedures and consequences for a finding of illegal drug use.

Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPC of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing. All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP, will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at a frequency stipulated in an abeyance contract with a minimum frequency of once per quarter year. Such testing is distinct from testing which may be imposed as a component of the EAP.

10.12 Finding of Drug Use and Consequences.

A. Determination. An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

- (1) Direct observation;
- (2) Evidence obtained from an arrest or criminal conviction;
- (3) A verified positive test result; or
- (4) An employee's voluntary admission.

B. Mandatory Administrative Actions. The Department shall refer any employee found to be using illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate. The Department shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, until the employee successfully completes rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the bureau head may, in his/her discretion, after consultation with the Medical

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9.5 Definitions.

A. "Applicant" means any individual tentatively selected for employment and includes any individual who has been tentatively identified for placement in a testing designated position and who has not, immediately prior to the placement, been subject to random testing. Employees currently occupying testing designated positions (TDPs) who apply and are tentatively selected for another TDP, are considered to be applicants and therefore subject to applicant testing. In cases of directed management assignment into TDPs, where for the "good of the service" an individual is placed into a TDP, the individual is not considered to be an applicant for purposes of applicant testing.

B. "Drug Program Coordinator (DPC)" means an official in each bureau headquarters assigned to carry out the purposes of this plan by the bureau head.

C. "Employee Assistance Program (EAP)" means the Department's counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

D. "Employee Assistance Program Administrator" means the individual responsible for ensuring the development, implementation and review of the Department EAP.

E. "Employee Assistance Program Coordinator" means the bureau official (designated by the bureau head) responsible for implementing and operating the EAP within the bureau component assigned to the coordinator, by providing counseling, treatment, and education services to employees and supervisors.

F. "Medical Review Official (MRO)" means the official who is responsible for receiving laboratory results and who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

G. "Illegal Drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 14 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

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(3) Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral. Under Executive Order 12564, the Department is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except: if an employee (1) voluntarily admits his/her drug use prior to notification of selection for random testing; (2) completes counseling or in an EAP; and (3) thereafter refrains from drug use; such discipline is not required.

(1) The decision whether to discipline a voluntary referral will be made by the bureau head or his/her designee on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the Department in determining whether to discipline, shall consider that the employee has come forward voluntarily.

(2) The self-referral option allows any employee to step forward and identify him/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward, an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall merely constitute an identification for purposes of this section.

(3) The key to the provision's rehabilitative effectiveness is an employee's willingness to admit his/her problem. This provision will not be available to an employee who is asked to provide a urine sample when required or who is found to have used illegal drugs pursuant to 370 DM 792, 10.12A(1) or 10.12A(2), and who thereafter requests protection under this provision.

10.13 Records.

A. Confidentiality of Test Results. The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug, will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. 522a, and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO or his/her designee, may maintain only those records necessary for compliance with this order. Any

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C. Drugs To Be Tested For. At a minimum, employees will be tested for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). Additional categories of drugs may be included at the discretion of the Medical Review Official in accordance with HHS guidelines.

D. Labor Organizations. The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation and training programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

9.3 Authorities.

- A. Executive Order 12564, Drug Free Federal Workplace;
- B. Executive Order 10450, Security Requirements for Government Employment;
- C. Section 503 of the Supplemental Appropriations Act of 1987, P. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987);
- D. Scientific and Technical Guidelines for Drug Testing Programs, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;
- E. Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, Alcohol, (ADAMHA), (HHS), as amended;
- F. Civil Service Reform Act of 1978, P. L. 95-454;
- G. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug-abuse patient treatment records;
- H. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;

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efficiently implement this program and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this program.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the servicing personnel office. Such records and information shall remain confidential, locked in a safe, with only authorized individuals who have a "need-to-know" having access to them.

D. Employee Assistance Program Records. The EAP Administrator shall maintain only those records necessary to comply with this order. After an employee is referred to an EAP, the EAP will maintain all records necessary to carry out its duties.

All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.

E. Maintenance of Records. The Department shall maintain records of the Drug Free Workplace Program consistent with OPM's Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the bureau head. The record keeping system should capture sufficient documents to meet the operational and statistical needs of this issuance, and include:

- (1) Notices of verified positive test results referred by the MRO;
- (2) Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
- (3) Anonymous statistical reports; and
- (4) Other documents the DPM, DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order.

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Subchapter 9. Drug Free Workplace.

9.1 Introduction. On September 15, 1986, the President signed Executive Order 12564, Drug Free Federal Workplace, establishing a policy against the use of illegal drugs by Federal employees, whether on duty or off duty.

A. On July 11, 1987, Congress passed legislation effecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987), (hereafter, "the Act"), in an attempt to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

B. The Executive Order recognized that illegal drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year. The Federal Government, as the largest employer in the Nation, has a compelling proprietary interest in establishing reasonable conditions of employment including a plan designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and dealers that illegal drugs will not be tolerated in the Federal workplace.

C. The use of illegal drugs by Federal employees, on or off duty, cannot be tolerated. Employees who use illegal drugs, on or off duty, are less productive, have more on-the-job accidents, and a higher absenteeism rate than employees who do not use drugs and, thus, impair the Department's function to serve as an able custodian of the Nation's natural resources.

D. Drug usage could result in loss of life, injury, and damage or destruction of property. Emergency personnel must perform duties instantly and independently during times of crises with minimal supervision. For example, law enforcement officers and firefighters must be alert and ready to respond to emergency situations instantaneously.

E. Drug-using employees who interact with private industry could market for personal gain: (1) proprietary commercial and financial information of private entities in connection with mineral exploration and development; (2) advance notice of Departmental initiatives concerning leasing activities on Federal lands; (3) advance notice on planned Departmental land acquisition activities; and (4) proprietary data, including bid prices, in connection with procurements by the Department of goods and services. Further, drug usage could lead to intentional or unintentional law enforcement omissions or regulatory